

2000 No. 3063

SOCIAL SECURITY

**The Social Security (Contributions) (Japan)
Order 2000**

Made - - - - - *15th November 2000*

At the Court at Buckingham Palace, the 15th day of November 2000

Present,

The Queen's Most Excellent Majesty in Council

Whereas at Tokyo on 29th February 2000 the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan signed an Agreement on Social Security set out in the Schedule to this Order(a):

And Whereas by Article 13 of the Agreement it is provided that the Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective constitutional requirements necessary to give effect to this Agreement have been complied with:

And Whereas by section 179(1) and (2) of the Social Security Administration Act 1992(b) it is provided that Her Majesty may by Order in Council make provision for modifying or adapting that Act and the Social Security Contributions and Benefits Act 1992(c) in their application to cases affected by agreements with the governments of countries outside the United Kingdom providing for reciprocity in matters specified in the said section:

Now, therefore, Her Majesty, in pursuance of section 179(1) and (2) of the Social Security Administration Act 1992 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1. This Order may be cited as the Social Security (Contributions) (Japan) Order 2000 and shall come into force on the date on which the Parties exchange diplomatic notes informing each other that their respective constitutional requirements have been complied with.

Modification of the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992

2. The Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 shall be modified to such extent as may be required to give effect to the provisions contained in the Agreement so far as the same relate to England, Wales and Scotland.

A. K. Galloway
Clerk of the Privy Council

(a) See Cm 4744.

(b) 1992 c. 5.

(c) 1992 c. 4.

SCHEDULE

Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan on Social Security

The United Kingdom of Great Britain and Northern Ireland and Japan,

Being resolved to foster progress in the field of social affairs by co-operating in the area of social security, in particular as regards compulsory coverage,

Have agreed as follows:

Article 1

1. For the purposes of this Agreement:

- (a) “United Kingdom” means Great Britain and Northern Ireland and, where the context requires, also the Isle of Man, Jersey and Guernsey and, similarly, references to “territory” in relation to the United Kingdom shall, where the context requires, mean also the Isle of Man, Jersey and Guernsey;
- (b) “Jersey” means the Island of Jersey;
- (c) “Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou;
- (d) “legislation” means,
 - (i) in relation to Japan, the laws and regulations of Japan concerning the pension systems specified in paragraph 1(a) of Article 2 except those promulgated for the implementation of other agreements on social security comparable with this Agreement, and
 - (ii) in relation to the United Kingdom, the Acts, Laws and Orders in Council, orders and regulations of the United Kingdom specified in paragraphs 1(b) and 2 of Article 2 and the orders and regulations made under them;
- (e) “the EEA Agreement” means the Agreement establishing the European Economic Area dated 2nd May 1992^(a) made between the European Community, its Member States and the Member States of the European Free Trade Association and any amendments or modifications thereto;
- (f) “compulsory coverage” means,
 - (i) in relation to Japan, liability for contributions under the legislation of Japan or exemption from liability for contributions by the legislation of Japan, and
 - (ii) in relation to the United Kingdom, liability for contributions as an employed or self-employed person under the legislation of the United Kingdom;
- (g) “competent authority” means,
 - (i) in relation to Japan, any of the Governmental organizations competent for the Japanese pension systems specified in paragraph 1(a) of Article 2, and
 - (ii) in relation to the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, the Department of Health and Social Security of the Isle of Man, the Employment and Social Security Committee of the States of Jersey or the Guernsey Social Security Authority as the case may require;
- (h) “competent institution” means, in relation to Japan, any of the insurance institutions, or any association thereof, responsible for the operation of the Japanese pension systems specified in paragraph 1(a) of Article 2.

2. For the purpose of this Agreement, any term not defined in this Agreement has the meanings assigned to it under the respective legislation of either Party.

^(a) Treaty Series No. 26 (1995) Cm 2847.

Article 2

1. This Agreement shall apply,

- (a) in relation to Japan, to the following Japanese pension systems:
 - (i) the National Pension;
 - (ii) the Employees' Pension Insurance;
 - (iii) the Mutual Aid Pension for National Public Officials;
 - (iv) the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status;
 - (v) the Mutual Aid Pension for Private School Personnel; and
 - (vi) the Mutual Aid Pension for Agricultural, Forestry and Fishery Organization Personnel; and
- (b) in relation to the United Kingdom, to:
 - (i) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992;
 - (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Social Security (Consequential Provisions) (Northern Ireland) Act 1992;
 - (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);
 - (iv) the Social Insurance (Guernsey) Law, 1978;
 - (v) the Social Security (Jersery) Law, 1974;

and the Acts, Laws and orders which were repealed or consolidated by those Acts, Laws or orders.

2. In relation to the United Kingdom, this Agreement shall apply also to any Acts, Laws, Orders in Council, orders or regulations which supersede, replace, amend, supplement or consolidate the Acts, Laws or orders specified in paragraph 1(b).

3. This Agreement shall not affect rights and obligations arising under the law of the European Union or under the EEA Agreement, or under any agreement or convention on social security which either Party has concluded with a third party, but shall not prevent either Party taking into account in the operation of this Agreement the provisions of any such agreement or convention which that Party has concluded with a third party.

Article 3

Subject to the provisions of this Agreement, a national of one Party or any other person who is or has been subject to the legislation of one Party shall, while that person is in the territory of the other Party, have the same rights and obligations under the legislation of that other Party as a national of that other Party.

Article 4

1. As regards compulsory coverage, subject to the provisions of paragraphs 2 to 5 and Articles 5 to 7, where a person works as an employed or self-employed person in the territory of one Party, that person shall be subject only to the legislation of that Party. Where a person is subject only to the legislation of the United Kingdom in accordance with the provisions of this paragraph, that legislation shall apply to that person as if that person were ordinarily resident in the United Kingdom.

2. As regards compulsory coverage, subject to the provisions of paragraph 1 of Article 5, where a person works as an employed person in the territory of both Parties and would otherwise be subject to the legislation of both Parties for the same period, that person shall be subject only to the legislation of the Party in whose territory that person is ordinarily resident.

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3. As regards compulsory coverage, where a person is ordinarily resident in the territory of one Party and works as a self-employed person in the territory of both Parties and in case that person would otherwise be subject to the legislation of both Parties for the same period, that person shall be subject only to the legislation of the Party in whose territory that person is ordinarily resident.

4. As regards compulsory coverage, subject to the provisions of paragraphs 1 and 2 of Article 5, where a person works as an employed person in the territory of one Party and as a self-employed person in the territory of the other Party and in case that person would otherwise be subject to the legislation of both Parties for the same period, that person shall be subject only to the legislation of the Party in whose territory that person is ordinarily resident.

5. A person who is receiving benefits under Japanese laws and regulations on account of sickness, injury or pregnancy for any period while that person is in Jersey or Guernsey, shall be excepted from liability to pay a contribution in respect of that period, other than as an employed or self-employed person, under the legislation of Jersey or Guernsey.

Article 5

1. As regards compulsory coverage, subject to the provisions of Articles 6 and 7, where a person who is insured under the legislation of one Party, and employed by an employer with a place of business in the territory of that Party, is sent by that employer, either from the territory of that Party, or from a third country, to work in the territory of the other Party, that person shall be subject only to the legislation of the former Party as if that person were working in the territory of that Party, provided that the period of such detachment is not expected to exceed five years.

2. As regards compulsory coverage, where a person insured under the legislation of one Party, who ordinarily works as a self-employed person in the territory of that Party, works only in the territory of the other Party, that person shall be subject only to the legislation of the former Party as if that person were working in the territory of that Party, provided that the period of the self-employment in the territory of the other Party is not expected to exceed five years.

3. Where, by virtue of the provisions of paragraph 1 or 2, a person works as an employed or self-employed person in the territory of one Party while remaining subject only to the legislation of the other Party, that person shall not be entitled to pay contributions voluntarily under the legislation of the former Party, unless such voluntary payments are made under the legislation of that former Party with respect to voluntary payment of contributions only by those aged sixty or over.

4. For the purposes of this Article, "insured" means,

- (a) in relation to Japan, that, immediately before the commencement of the period of detachment or self-employment in the United Kingdom, contributions have been paid by, or in respect of, or are payable by, or in respect of, the person concerned, or exemption from liability for contributions has been granted to, or in respect of, the person concerned, and
- (b) in relation to the United Kingdom, that, immediately before the commencement of the period of detachment or self-employment in Japan, contributions have been paid by, or in respect of, or are payable by, or in respect of, or have been credited in respect of, the person concerned.

Article 6

As regards compulsory coverage of a person who works as an employed person on board a sea-going vessel flying the flag of either Party, if that person would otherwise be subject to the legislation of both Parties, that person shall be subject only to the legislation of the Party in whose territory that person is ordinarily resident.

Article 7

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18th, 1961(a), or the Vienna Convention on Consular Relations of April 24th, 1963(b).

2. As regards compulsory coverage, subject to the provisions of paragraph 1, where any civil servant of one Party, any person to be treated as such in the legislation of that Party or any such person as the competent authority of that Party may, within its authority, deem to be treated as a civil servant in the operation of this Agreement, is sent to work in the territory of the other Party, that person shall be subject only to the legislation of the former Party as if that person were working in the territory of that Party.

Article 8

1. For the purpose of modifying the application of the provisions of Articles 4 to 7 in a particular case, subject to paragraph 2 of this Article, as regards compulsory coverage, where by virtue of the provisions of Articles 4 to 7 the legislation of one Party is applicable to a person, the competent authority or competent institution of that Party may exempt that person from that legislation, provided that the following requirements are fulfilled:

- (a) that person will be subject to the legislation of the other Party;
- (b) that person agrees to be subject only to the legislation of that other Party in advance; and
- (c) the competent authority or competent institution of that other Party agrees on the exemption in advance.

2. As regards compulsory coverage of a person who works as an employee or self-employed person in the territory of one or more third countries while that person is working as an employee or self-employed person in the territory of either or both of the Parties, if the legislation of either of the Parties does not apply to that person under the provisions of Articles 4 to 7 of this Agreement and that legislation applies to that person under the provisions of any other agreement or convention on social security or any arrangement on social security under the law of the European Union or under the EEA Agreement, comparable with this Agreement, to which that Party is a party, the legislation of both Parties shall apply notwithstanding any other provision of this Agreement.

Article 9

1. The competent authorities or competent institutions of the two Parties shall provide any assistance necessary for the operation of this Agreement. This assistance shall be free of charge.

2. The competent authorities or competent institutions of one Party shall, in accordance with its legislation and other relevant laws and regulations, send to those of the other Party information about an individual collected under its legislation in so far as that information is necessary for the application of this Agreement.

3. For the purposes of this Agreement, no document of any kind written in the language of one Party shall be rejected by the competent authorities or competent institutions of the other Party on the ground that it is written in the language of the former Party.

4. Unless disclosure is required under the legislation or other relevant laws and regulations of one Party, any information about an individual which is sent in accordance with the provisions of paragraph 2 shall be treated as confidential and shall be used only for the purposes of applying this Agreement and the legislation of that Party.

(a) Treaty Series No. 19 (1965) Cm 2565.

(b) Treaty Series No. 14 (1973) Cm 5219.

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5. The competent authorities or competent institutions of the two Parties shall cooperate, upon the request of one Party, to the extent possible in accordance with their respective laws and regulations, as regards the collection of contributions to be paid under the legislation of that Party.

Article 10

The competent authorities of the two Parties shall:

- (a) agree on the administrative measures necessary for the operation of this Agreement;
- (b) designate liaison agencies for the operation of this Agreement; and
- (c) communicate to each other, as soon as possible, all information about changes to their legislation in so far as those changes affect the operation of this Agreement.

Article 11

1. The two Parties shall make all reasonable efforts to settle through negotiation any dispute about interpretation or application of this Agreement.

2. If any dispute cannot be settled as in the provisions of paragraph 1, it shall be submitted, at the request of either Party, for decision to an arbitral tribunal which shall be constituted for each individual case in the following manner:

- (a) each Party shall appoint an arbitrator no later than sixty days after the date when one Party has notified the other through diplomatic channels of the request for arbitration. The two arbitrators shall agree to appoint a third arbitrator as chairman of the arbitral tribunal, who shall not be a national of either Party, and who shall be appointed no later than thirty days after the date when the Party which was the later to appoint its arbitrator has notified the other Party of the appointment; and
- (b) if either Party fails to appoint an arbitrator, or if the arbitrators appointed by the Parties do not agree upon a chairman within the respective periods referred to in sub-paragraph (a), either Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one Party or is prevented from making the appointments for any other reason, the Vice-President of the International Court of Justice or, if the Vice-President is similarly prevented from acting, the most senior judge of the International Court of Justice who is not prevented may be requested to make the appointments.

3. The decision of the arbitral tribunal, which shall be binding and final on both Parties, shall be by majority vote.

4. Unless the arbitral tribunal, decides otherwise—

- (a) each Party shall bear the cost for its arbitrator, and of its representation before the arbitral tribunal; and
- (b) the costs of the chairman and other expenses shall be shared equally between the two Parties.

5. The arbitral tribunal shall determine its own rules of procedure.

6. For the purpose of paragraph 1 and 2 of this Article, “Party”, in relation to the United Kingdom, means, as the case may require, the competent authority of the United Kingdom.

Article 12

In applying the provisions of paragraphs 1 and 2 of Article 5 in the case of persons whose detachment or self-employment referred to in the said paragraphs commenced prior to the date of entry into force of this Agreement, the period of such detachment or self-employment shall be considered to begin on the date of entry into force of this Agreement.

Article 13

This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective constitutional requirements necessary to give effect to this Agreement have been complied with.

Article 14

1. This Agreement shall remain in force for an indefinite period. Either Party may give to the other Party, through diplomatic channels, written notice of termination of this Agreement. In that event, this Agreement shall remain in force until the last day of the twelfth month following the month in which the termination was notified.

2. In the event that this Agreement is terminated in accordance with the provisions of paragraph 1, negotiations shall take place between the competent authorities of the two Parties for the settlement of any questions concerning contribution liability outstanding by virtue of the provisions of this Agreement.

In witness whereof the undersigned, duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at Tokyo, this twenty-ninth day of February 2000, in the English and Japanese languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:
STEPHEN GOMERSALL

For the Government of Japan: *YOHEI KONO*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 so as to give effect to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan. The provisions relate to liability for social security insurance contributions arising in respect of employment and self-employment.

A compliance cost assessment of the effect that this instrument would have on the cost for business is available from Inland Revenue International, External Relations Group (DCC), 2nd Floor, Victory House, 30-34 Kingsway, London WC2B 6ES.

